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Current Topics.

Lord Macmillan.

SINCE LORD MACMILLAN resigned the office of Minister of Information, a post which he accepted on the urgent request of the Prime Minister, thereby vacating his appointment as a Lord of Appeal in Ordinary, speculation has been busy as to his future career, for with talents such as he possesses it was unthinkable that these should not be utilised in the public interest. There is now a rumour in quarters usually well informed that the high office of Governor-General of Canada, rendered vacant by the lamented death of LORD TWEEDSMUIR, may be offered to LORD MACMILLAN. If it should be so, we shall have the unique circumstance of a son of a Scottish minister being succeeded in his high office by the son of another well-known minister of the Scottish church. Few public men have inspired confidence to such a degree as has LORD MACMILLAN, one of the most remarkable instances of this being the incident referred to by the present Lord Chancellor, when Attorney-General, in an address to the Bolton and District Law Students Debating Society some years ago, in which he mentioned that he happened to be trustee under a testamentary disposition where difficult questions arose as to the disposal of certain funds as between the trustees of a marriage settlement and the tenant for life. Mr. MACMILLAN, as he then was, had advised the tenant for life. When litigation seemed inevitable a suggestion was put forward that the matter should go to arbitration, and the solicitor for the marriage settlement trustees suggested that Mr. MACMILLAN, who had been advising the other side, should be arbitrator. "I do not think," continued the Attorney-General, "that any man could imagine a greater compliment in the confidence not only of his client, but even of his opponent." More than once LORD MACMILLAN has been, as it were, called in to advise his literary friends as to the correctness of their law in the works of fiction they were producing. We have it on his own authority that when Mr. GALSWORTHY was writing "Maid in Waiting" he administered to LORD MACMILLAN a series of interrogatories on the law of extradition, and then he added, when recounting the incident, that if some higher critic can find a flaw in the proceedings for the extradition of Hubert Cherell, he, the learned lord, must take a share of the blame.

The Army Council and Criminal Jurisdiction.

The Times of 14th March referred to a case which came before the Court of Appeal on the previous day from the Divisional Court, and raised an interesting question relating to the position of the Army Council in reviewing court-martial findings. In the case in question the Divisional Court had refused an application for a writ of *mandamus* commanding the Army Council to mitigate, remit or commute a sentence which had been passed on the appellant by a court-martial. The Court of Appeal upheld a preliminary objection taken by the Crown that there was no jurisdiction to entertain the appeal in that it related to a criminal cause or matter. It will be recalled that under s. 31 of the Supreme Court of Judicature (Consolidation) Act, 1925, no appeal, except as provided by the Criminal Appeal Act, 1907, or that Act, lies from a judgment of the High Court in any criminal cause or matter. In giving judgment, SLESSER, L.J., said that it was clear from the authorities that proceedings for prohibition or *mandamus* in relation to criminal matters were themselves in respect of criminal matters. The real question, therefore, was whether the proceedings before the Army Council were criminal proceedings. The Army Council had jurisdiction under the King's Regulations to decide whether the proceedings of a court-martial should or should not be quashed, and it had power under s. 57 (2) of the Army Act to mitigate, remit, or commute sentences. The former, the learned Lord Justice indicated, was clearly a criminal proceeding; and although, as regards the latter, it might be argued that the remission of a sentence was not necessarily a judicial act—for instance, the act of the Home Secretary in remitting a sentence passed by a criminal court—the language of s. 57 (2) extended to the dealing with the punishment itself. His lordship thought, therefore, that the competent authority under that section was exercising judicial functions just as much as the Court of Criminal Appeal did when called on to deal with a sentence passed by a criminal court. The question was not whether the Army Council was a court in the narrow sense, but whether its decision was a decision in a criminal cause or matter. If a tribunal, which was vested with criminal jurisdiction of a judicial or quasi-judicial nature, exercised that jurisdiction, it followed that an application for a *mandamus* in relation to such exercise was in respect of a criminal matter. LUXMOORE and GODDARD, L.JJ., agreed that the Court of Appeal had no jurisdiction to entertain the appeal.

Solicitor acting for Enemy Alien.

It is a well established principle of common law that the effect of war on contracts made between a British subject and a party who subsequently becomes an enemy alien is suspension or abrogation, consequently it would seem that the contractual relationship of a solicitor on record and his client, when the latter is an enemy alien, would be so affected that service to the solicitor would not be service to the client. The point arose in the course of a case (14th March) where service of notice of motion was made to the solicitors on the record of an enemy alien in an action commenced before the war. Mr. Justice Simonds, before proceeding with the motion, had to decide whether the service was good service, and in the course of the argument his lordship himself put the question concisely: "Does the contract of a solicitor with his principal stand outside the common law?" His lordship said that the person who was interested ought to be heard, but how could he be heard unless it was brought to his notice or to the notice of a person who had authority to act for him. The respondent (the enemy alien) was not before the court, and it was extremely unlikely that the notice to the solicitor went to him. There could not be imposed upon a British subject the obligation of communicating with an enemy alien during the war; on the other hand, the party himself (the enemy alien) must not be denied justice if his solicitor did not so communicate. "I am prepared to say," added his lordship, "that so long as the solicitors are on the record, service on them of the notice of motion has been proper service, but I will make no order which will have the effect of finally disposing of the respondent's right unless he has had the opportunity of considering his position." In the result, his lordship stood the matter over with leave to apply to restore.

London Rating.

In our issue of the 9th March we drew attention to amendments which had been introduced into the Rating and Valuation (Postponement of Valuations) Bill with a view to mitigating hardships which would have been caused to certain classes of ratepayers in the Metropolis by the postponement of the valuations contemplated by the measure. The chairman of a metropolitan assessment committee recently wrote to *The Times* complaining that the amendments did not go far enough. He urged that, apart altogether from conditions arising from the war, the postponement of the quinquennial re-valuation would inflict considerable hardship on large numbers of London ratepayers whose assessments have become incorrect. Under the amendments above referred to, if A's assessment has become incorrect owing to circumstances attributable directly or indirectly to the present emergency the matter can be remedied; but if B's assessment has become incorrect owing to other conditions, but not owing to a "cause" within the Valuation (Metropolis) Act, 1869, no remedy is available. The writer therefore suggested that the words "whether or not" might be inserted before the phrase "attributable directly or indirectly to the present emergency" contained in cl. 1 (2) of the Bill.

Income Tax: Civil and Service Pay.

The Chancellor of the Exchequer in the course of a written reply to a question recently asked in the House of Commons concerning income tax of men in the Forces, stated that, in general, the ordinary full-time employee would be regarded as ceasing his civil employment on joining the Forces, and his liability to tax for the year of enlistment or mobilisation in respect of pay from his civil employer would then be based on his actual pay for the year, including any pay received from the civil employer during service with the Forces. Sir John Simon further indicated that where a case was so dealt with it was not proposed to take any steps to apply the special provision contained in s. 45 (5) of the Finance Act, 1927, under which in certain circumstances an additional assessment may be raised for the year preceding the year in which a cessation of employment takes place. The liability in respect of pay from the Forces is also to be based on the actual pay for the year, except in cases where pay has been received in respect of service with the Auxiliary Forces which is of sufficient length to bring the preceding year basis into operation. It was stated that there would be cases (especially where pay was received from the civil employer during service with the Forces) in which it would be more advantageous to an employee whose assessments in respect of civil pay had been on a preceding year basis to have that basis continued instead of changing to the actual year basis. In such cases the Chancellor of the Exchequer indicated that no objection would be offered to assessment on the footing that the pay from the civil employer and from the Forces arose from continuous employment so that the preceding year basis would not be disturbed, and the inclusive liability for the year of enlistment or mobilisation would then be on the amount of the earnings for the preceding year.

Defence (Finance) Regulations: Stamps on Mortgages.

Under the Defence (Finance) Regulations, 1939, on lodging a mortgage deed for stamping in cases where the consideration involved in that transaction and in all or any transactions of the kind mentioned in reg. 6 (1) does not exceed £10,000 a certificate to that effect is required by the Controller of Stamps to be given by the mortgagor. The current number of *The Law Society's Gazette* draws attention to a suggested clause for insertion in such a mortgage. We venture with due acknowledgments to our contemporary to reproduce this form, which has been approved by the Controller of Stamps as an alternative to the certificate normally required by him. The clause is as follows: "It is hereby certified that the value of the consideration involved in this transaction together with the value of the consideration involved in all or any transactions of the kinds mentioned in paragraph (1) of Regulation 6 of the Defence (Finance) Regulations 1939 by the mortgagor [in the period beginning on the 3rd day of September 1939] [in the twelve months previous to the date hereof] does not exceed £10,000."

Headlamp Masks.

Readers will remember that the official type of headlamp mask for motor vehicles which was originally to be fixed on the off-side may now be fixed on either side of the vehicle at the discretion of the owner. Doubts have been entertained as to the legality of fitting masks on both sides of the car. Monday's *Times* states that the Royal Automobile Club has been informed by the Minister of Home Security that there is nothing in the Lighting (Restrictions) Order to prevent the fitting of both headlamps of a motor car with masks. Cars so fitted should, however, in order to prevent a contravention of the order, be re-wired so as to permit of only one headlamp displaying light at any one time.

Recent Decision.

In *Attorney-General* v. *Glyn, Mills & Co.* (*The Times*, 14th March) the House of Lords affirmed a decision of the Court of Appeal (reversing that of Lawrence, J.) to the effect that, where a private Act of Parliament conferred new powers (*a*) on a son to charge settled property, whether he should survive his father or not, and (*b*) on the father to release his life interest in the sum so charged, the chain of succession was broken by the exercise of such powers in favour of the son for his own absolute benefit. The son's "succession" within the meaning of s. 2 of the Succession Duty Act, 1853, had been conferred upon him by his own act, and s. 12 of the Act applied, if at all, only as regards the last two lines.

Leave to Proceed: Debtors' *Private* Means.

"PARLIAMENT did not provide that debtors should be preferred to creditors," said Scott, L.J., delivering the judgment of the Court of Appeal (Scott, Clauson, L.JJ.) in *Landau* v. *Huberman and Others* (1940), 2 All E.R. 66, 68. See also the observations of Slesser and Goddard, L.JJ., in *Metropolitan Properties Co., Ltd.* v. *Purdy* (1940), 1 All E.R. 188, 190, 191, 192 (*ante*, p. 104).

"It provided," continued the learned Lord Justice, "that they should be preferred only where it is just in the circumstances laid down in the Act" [*sc.* the Courts (Emergency Powers) Act, 1939]. "Where the inability of the debtor to make payment to the creditor is due to the war, the burden should be distributed between creditor and debtor in proportions which the court thinks fair."

The defendants carried on business *in partnership* as retailers of ladies' costumes; they had been sued to judgment for rent and instalments due under a charge in respect of business premises. The rent was £3,800 per annum in addition to a premium of £11,000, of which £4,000 was payable upon the execution of the lease and the balance by instalments secured by a charge upon the lease. They applied for relief under s. 1 (4). "Under that subsection," said Scott, L.J., "the court is given a discretion to modify the contractual rights and obligations of the parties" (at p. 67). (With respect, it is doubtful whether the effect of s. 1 (4) is so drastic). The "fullest information" was accordingly necessary. Master Jelf ordered that on payment of £250 at once and £100 per month the order should not be enforced. Tucker, J., reversing this order, gave unconditional leave to proceed. The defendants appealed.

In *A* v. *B* [1940] 1 K.B. 217, 224, 225, 226, *per* Sir Wilfrid Greene, M.R., the full Court of Appeal laid down, in effect, two propositions, Scott, L.J., declared. *First*, the debtor must prove inability to pay. *Secondly*, he must prove that this inability is due to the war. The decision must be made "in the light of all the facts." It was necessary, therefore, to furnish an exposition of the "present actual financial position" of the defendants.

Where the defendants carry on business *in partnership*, this exposition must relate not only to the assets and liabilities of *the business*, but also to the defendants' own *personal* assets and liabilities. The affidavit deposed explicitly and with considerable detail (these are the words of Scott, L.J.) that the direct consequence of the war was *seriously to diminish the sales* of ladies' costumes. With this part of the case the court was quite satisfied. But other matters must also be proved. The defendants must give "details of their private means and personal positions," showing that their own means are insufficient to discharge the debts of the business. This result, they must prove, is due to "circumstances directly or indirectly attributable" to the war.

The defendants, by their affidavits, said that all the partners were concerned in other businesses; that one of these had similarly suffered; that they had no available resources whence to pay the claim. No *pass book*, however, was produced; no affidavit by an *accountant* who had investigated the partners' *private affairs*.

> "We cannot consider the statement that they have not any available private resources as in any way adequate or sufficient to discharge the duty of an applicant to the court, and to enable the court to deal out justice to the creditor and the debtor" (at p. 68 (1940), 2 All E.R.).

The court accordingly dismissed the appeal with costs, holding that "in view of the insufficiency of the affidavit of the debtors with regard to their private means," Tucker, J., was right in setting aside "the more indulgent order of Master Jelf."

In *A* v. *B*, *supra*, where the affidavit of means was also inadequate, the Court of Appeal gave the appellants a further opportunity of tendering further evidence as to their financial position on the ground that they may have been under a misapprehension as to the sort of evidence required (at p. 227 of [1940] 1 K.B.). In that case, too (it may be remembered), Master Jelf had refused leave to proceed and his order was reversed by Oliver, J. (see p. 218).

The *dicta* of the Court of Appeal in *Landau* v. *Huberman*, *supra*, that where the inability to pay is due to the war, the burden should be distributed between debtor and creditor "in proportions which the court thinks fair," are, with respect, unexceptionable and the only correct criterion. But with very great respect, it is difficult to see why, on the facts of the case before them, the court did not exercise their discretion and proceed to "distribute the burden"—or, at least, give the defendants liberty to put in a further affidavit (as in *A* v. *B*). If the result of the war was to diminish the sales "very greatly," this fact, one might have thought, would point to an equally substantial diminution of means. To produce a pass book might not, one would imagine, be difficult. It is true that since *A* v. *B* was decided in October, 1939, the practice is now settled. But even now—from the divergence between the attitude of the masters and the attitude of the judges—the rules are far from well established. Thus, in *Metropolitan Properties Co., Ltd.* v. *Purdy*, *supra* —which does not appear to have been cited in the arguments nor mentioned in the judgment—Master Mosely had refused leave to proceed, Tucker, J., granted it, suspended on terms—an order similar to the one made by Master Jelf in *Landau* v. *Huberman* and set aside by Tucker, J., and the Court of Appeal —and his order was upheld in the Court of Appeal. MacKinnon, L.J., observed that the judge had an insoluble problem. Goddard, L.J., thought that the court should not interfere with the judge's discretion unless he had done something unjust (at p. 192 of (1940), 1 All E.R.). He had done nothing unjust because he had to take into account the position of the plaintiffs as well as the position of the defendant.

In *Landau* v. *Huberman*, *supra*, the position of the defendants—purely on the ground of the insufficiency of the defendants' affidavit with regard to private means (an affidavit which they may have been able to amplify)—does not, with very great respect, appear to have been taken into account.

Moneylenders' Securities and Memorandum of Contract.

SECTION 6 of the Moneylenders Act, 1927, appears to have given rise to more litigation than any other section of the Act. This section provides that unless a note or memorandum of a moneylending contract is signed personally by the borrower before the money is lent and unless within seven days of the contract a copy of such memorandum be delivered to the borrower, the contract, and any securities given for the loan, will be unenforceable. Section 6 (2) of the Act specifies the contents of the note or memorandum. It enacts that "The note or memorandum aforesaid shall contain *all the terms of the contract* . . ." and sets out some of the terms which are required to be included.

The section does not require a copy of the securities given to secure the loan to be delivered to the borrower, nor does it expressly require the terms of the security to be set out in the memorandum. It is, however, obvious that the nature of any security to be given is an essential term of the contract—whether the loan is to be secured by a promissory note or a bill of sale or a mortgage—and the fact that such a security is to be given must be stated in the memorandum of the contract. The question has recently arisen, however, whether the whole of the terms of the security for the loan should be included in the memorandum of the contract—e.g., the contents of a bill of sale or a mortgage given to secure the loan.

The question was raised in *Reading Trust, Ltd.* v. *Spero* [1930] 1 K.B. 492, where a promissory note given to secure a moneylender's loan was expressed to be payable at 84, Jermyn Street (which was the moneylender's address). The memorandum of the contract did not state where the promissory note was payable, but simply referred to the fact that the loan was to be secured by a promissory note. It was held that the omission to state in the memorandum of the contract where the loan was payable did not invalidate the memorandum, as the fact of the promissory note being payable at 84, Jermyn Street did not impose any burden on the borrower beyond what was shown in the memorandum.

The considerations affecting the question were stated by Scrutton, L.J., who said (p. 505): "It seems clear in s. 6 that the Legislature, while requiring a copy of the contract to be signed, has not required a copy of the security to be sent to the borrower, and it may need consideration whether, if there is a more onerous term in the security than in the contract, the note of the contract may not be incomplete. I am disposed to think that where the contract contemplates a promissory note as a security and there is a promissory note *in the ordinary form, not contradicting the contract*, the fact that the contract does not set out the terms of the promissory note will not invalidate the contract. It may be otherwise if the security contains an onerous term not in the contract."

In *Mills Conduit Investments Co.* v. *Tattersall* [1940] W.N. 19, a promissory note was mentioned in the memorandum, though the borrower was not specifically referred to it for its terms. In the memorandum there was a phrase which, on the face of it, appeared ambiguous, but the promissory note contained a term which was quite consistent with one of the interpretations of that phrase. du Parcq, L.J., held that the memorandum was good. He said (p. 20): ". . . where there is given to a borrower, in respect of a moneylending contract, a memorandum which is susceptible of two meanings, if one of those meanings is at least as open to the reader as the other, and correctly represents the actual agreement between the parties, then it would not be right to say that the memorandum must be regarded as bad, because it is possible to extract from it another meaning which does not truly represent the agreement."

The consideration of a case where the security contained an onerous term arose in *Mitchener* v. *Equitable Investment Co., Ltd.* (1938), 1 All E.R. 303. In that case a loan was secured by a bill of sale in the statutory form upon the borrower's furniture. The memorandum of the loan stated that the loan was secured by a bill of sale, but did not refer in any way to the power to seize the furniture. It was held (following the unreported case of *Westropp* v. *Equitable Investment Co., Ltd.*) that the memorandum of the contract was insufficient because it did not contain an onerous term—the power of seizure—contained in the bill of sale. The mere reference in the memorandum to the fact that the loan was secured by a bill of sale was not sufficient to comply with the terms of s. 6 of the Moneylenders Act, 1927. The fact that the Bills of Sale Acts prescribe a statutory form for bills of sale and that no other powers of sale than those mentioned in s. 7 of the Bills of Sale Act (1872) Amendment Act, 1882, may be exercised did not affect the matter, because the borrower is entitled to know which of the five statutory powers of seizure and sale was incorporated in the actual bill of sale, and he could not know this until he saw the bill of sale itself.

Hoare v. *Adam Smith (London), Ltd.* (1938), 4 All E.R. 283, was another case where a loan was secured by a bill of sale. The memorandum of the contract referred to the bill of sale and also recited that a copy of the bill of sale had been handed to the borrower. du Parcq, L.J., held that the moneylenders were entitled to say that the bill of sale must be looked at together with the memorandum to see whether the memorandum contained what the Moneylenders Act, 1927, says it should contain. He expressly stated that he did not dissent from *Mitchener* v. *Equitable Investment Co., Ltd.*

In *Tooke* v. *Bennett & Co.* (1939), 4 All E.R. 200, a loan was secured by a bill of sale, a copy of which was attached to the memorandum of the loan. The memorandum did not set out an onerous condition in the bill of sale, but made reference in general terms to the bill, giving its date and value, set out the power of seizure and sale and stated that a copy of the bill of sale was attached to the memorandum. It was argued that the memorandum referred to in s. 6 of the Moneylenders Act, 1927, could not be contained in two documents. Lewis, J., said (p. 203): "It seems to me that where there is a memorandum of agreement which not only makes reference to the bill of sale, giving the date and also the value of the bill of sale, but also sets out in terms the causes of seizure referred to in the bill of sale, and also says that a copy of the bill of sale is attached to the memorandum, and, in this case, was in fact attached to the memorandum, it seems to me that the contention that the two documents cannot be read together is not valid. In my view the memorandum and the bill of sale are one document and the bill of sale clearly sets out the '[onerous]' clause."

In *Central Advance & Discount Corporation* v. *Marshall* (1939), 3 All E.R. 695, the plaintiffs had advanced money to the defendant to be repaid by monthly instalments. The loan was secured by a bill of sale and by a guarantee executed by guarantors. The guarantee contained a clause providing that, in the event of the bill of sale being or becoming invalid or inoperative, the guarantors would, on demand, pay to the lenders the amount of the loan and interest on the unpaid part thereof. The memorandum of the contract mentioned the bill of sale and the guarantee, but did not disclose the clause just mentioned. It was held by the Court of Appeal that the clause was one which imposed a further liability on the borrower and was therefore a term of the contract which should have been set out in the memorandum. A mere reference to the fact that a guarantee was to be given without any reference to this clause was insufficient to satisfy the provisions of s. 6 of the Moneylenders Act, 1927. Clauson, L.J., in delivering the judgment of the Court of Appeal, said (p. 696): "The Act does not require the terms of the security to be set out in the memorandum, but if the effect of the security is that a liability different in any respect to that described in the memorandum is, or may be, *directly or indirectly* imposed on the borrower, this further liability must appear in the memorandum." He then went on to point out that the presence of the clause in question in the guarantee imposed the possibility of a serious liability directly on the guarantors, and, owing to the relation between the guarantors and the borrower, indirectly upon the borrower.

The general conclusion to be drawn from these cases is that the memorandum must contain sufficient portions of the documents creating the security to bring to the notice of the borrower the exact nature of the transaction into which he is entering and of the obligations which he is incurring. Sufficient details must be set out to enable him to decide the legal effect of the transaction (see *Simmons* v. *Russell Financiers, Ltd.* [1934] 2 K.B. 487). In drawing up a memorandum of a money-lending contract, the moneylender or his advisers must be careful to see that any onerous terms in the security are included in the memorandum. It is obviously impossible to say what clauses in a bill of sale or a mortgage or other document would be held by the courts to be so onerous that it must be included in the memorandum. This is a serious matter for lenders, and it would seem that the only really satisfactory way of overcoming the difficulties which occurred in such cases as *Mitchener* v. *Equitable Investment Co., Ltd.*, is either to incorporate in the memorandum the whole of the document creating the security or to attach a full copy of it as in *Tooke* v. *Bennett & Co.*

Company Law and Practice.

Charges requiring Registration under the Companies Act.—I.

THE requirements of the Companies Act relating to the registration of charges created by a company are no doubt very familiar to my readers, and in practice, I believe, comparatively few difficulties present themselves in regard to the registering of such charges. At the same time, it would not, I think, be without interest or practical value to consider exactly what charges the Act requires to be registered; for not every charge created by a company requires registration. The importance of registration where it is required needs no emphasis; failure to register has this result, that the security conferred by the charge is void against the liquidator and any creditor of the company, though the personal liability of the company to pay the debt is not affected, and the money secured becomes immediately payable. In any case of doubt there can be no question that the prudent course is to register the charge, not only in the interests of the secured creditor but also to avoid the heavy penalties to which s. 80 exposes the company and the directors and other officers responsible in case of default. Often, however, a company is desirous for various reasons to avoid the registration of charges, and there is nothing illegal or improper in creating a charge which does not fall within the scope of the provisions as to registration with this object in mind. Nevertheless the provisions of the Act are wide and cover most charges which would be created by a company in the ordinary course of its business.

Section 79 of the Companies Act, 1929, is the section which specifies the charges which require registration. It would, perhaps, be thought hardly necessary to observe that the section applies only to charges and consequently does not affect a transaction which is an out-and-out assignment of property; that proposition is no doubt self evident, but its application to a particular set of facts may sometimes be a matter of some difficulty, arising in the determination of the question whether the transaction is in truth one of sale or one of mortgage (see, for example, *In re George Inglefield, Ltd.* [1933] Ch. 1 (assignment of goods subject to and with the benefit of hire-purchase agreements): *Ashby, Warner and Co., Ltd.* v. *Simmons* (1936), 52 T.L.R. 613 (equitable assignment of part of a book debt)). Such questions, however, depend upon the particular facts of each case and if the transaction is in reality one of mortgage or charge the requirements of the section cannot be avoided by adopting a form which does not accord with the real transaction (see *Saunderson & Co.* v. *Clark* (1913), 29 T.L.R. 579).

The next thing to be observed is that s. 79 only applies to charges "created" by a company (though, as we shall see, a later section provides for the registration of charges already affecting property when it is acquired by a company). Accordingly, it appears that a right which arises by law, e.g., a vendor's lien or a solicitor's lien, does not require registration, since it is not "created" by the company (see *Brunton* v. *Electrical Engineering Corporation* [1892] 1 Ch. 434).

In this connection it should be borne in mind that an agreement to give security, i.e., to create a charge, may be so expressed as itself to create an immediate equitable right to a security. If so, the agreement itself must be registered under s. 79 if the equitable charge thereby created is to be valid, though if the formal security is prepared and executed with reasonable despatch, and duly registered within twenty-one days of its execution, the failure to register the prior agreement would not affect the security (see *In re Columbian Fire-Proofing Co., Ltd.* [1910] 2 Ch. 120). On the other hand, the agreement may be so expressed as to be merely an agreement that in certain future circumstances a security shall be created: in such a case the agreement itself does not create a charge and will not require registration (see *In re Jackson & Bassford, Ltd.* [1906] 2 Ch. 467, at p. 477).

There may be charges on property of a company which in form though not in substance are not created *by the company*. It is not uncommon for a company to have its property, especially real property, vested in nominees: if the company borrows money on the security of this property the mortgagors will in such cases be the nominees and the company's name may not appear at all. Nevertheless the charge will be in substance a charge on property of the company, and I do not think the fact that the charge is, in form, created by the mortgagors will render it any the less a charge created by the company: the nominees would throughout be acting simply as nominees for and by the direction of the company and the charge would be in substance a charge created by the company and as such require registration. I do not know of any express authority on the point, but I have heard of cases where charges on property held in the name of nominees of a company have not been registered and the court has extended the time for registration pursuant to s. 85 of the Act; in so doing it must have proceeded on the footing that the charges were properly registrable, i.e., were created by the comany.

The charges which, if created by a company, requir registration are specified in subs. (2) of s. 79, and are as follows:—

(*a*) a charge for the purpose of securing any issue of debentures;

(*b*) a charge on uncalled share capital of the company;

(*c*) a charge created and evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;

(*d*) a charge on land wherever situate, or any interest therein;

(*e*) a charge on book debts of the company;

(*f*) a floating charge on the undertaking or property of the company;

(*g*) a charge on calls made but not paid;

(*h*) a charge on a ship or any share in a ship;

(*i*) a charge on goodwill, or a patent or a licence under a patent, or a trade-mark, or on a copyright or a licence under a copyright.

Generally speaking, little difficulty arises in deciding whether a particular charge falls within one or other of the categories enumerated, but this is not always the case, and I propose to make a few observations on the charges specified. It need hardly be said that charge includes mortgage, and that it is immaterial whether the charge or mortgage is legal or equitable.

(*a*) A charge for the purpose of securing any issue of debentures. Probably the chief question which may arise in applying this provision is whether or not a particular document is a debenture. The provision in s. 380 of the Act that "debenture" includes "debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not" is not really a definition at all. It has been said in several cases that a document which is nothing more than an acknowledgment of indebtedness by the company may be a debenture (see, for example, *British India Steam Navigation Co.* v. *Inland Revenue Commissioners*, 7 Q.B.D. 165), and often it may be a matter of some difficulty to determine whether a particular document is a debenture for the purposes of the Companies Act (see, for example, *Lemon* v. *Austin Friars Investment Trust, Ltd.* [1926] Ch. 1; *R.* v. *Findlater* [1939] 1 K.B. 594). Such difficulties, however, usually arise where the particular document does not create a charge, and if no charge is created then there is nothing to register under s. 79. Even in the rare case where a charge is created to secure an issue of documents which are not debentures, so that the charge does not fall within para. (*a*), it will generally be found to require registration under one of the succeeding paragraphs.

(*b*) A charge on uncalled share capital of the company. Commonly the uncalled capital of a company is expressly included

in the property comprised in a floating charge on the company's undertaking and assets, but it is rare to find a charge on uncalled capital and nothing else. Before a charge on uncalled capital is given it is important to ascertain that the powers of borrowing and charging conferred by the memorandum of association authorise the creation of a charge on uncalled capital. A power to charge "property" does not authorise a mortgage of uncalled capital, for such capital is not "property" of the company at the time of the mortgage (*Bank of South Australia* v. *Abrahams*, L.R. 6 P.C. 265); on the other hand, a power to mortgage the company's "properties and rights" or to borrow on mortgage of any property and effects of the company "or in such other manner as the company may determine" will authorise a charge on uncalled capital (*Howard* v. *Patent Ivory Manufacturing Co.*, 38 Ch. D. 156; *Jackson* v. *Rainford Coal Co.* [1896] 2 Ch. 340).

(*To be continued.*)

A Conveyancer's Diary.

Sole Trustees for Sale.

Cases arise fairly often where, for some reason, it is inconvenient to appoint a colleague for a sole trustee for sale of land. When that happens, the question arises whether a second trustee must be appointed. There is a general superstition that one can never have less than two trustees for sale. Such a belief is not really justified, and it will be worth while to consider the position of a sole trustee for sale.

The only statutory requirements that there should be two or more trustees for sale are in ss. 2 (2) and 27 (2) of the Law of Property Act. Section 2 (2) need not detain us: it deals with the so-called *ad hoc* trust for sale which comes into being where the land is vested in a trust corporation or in two or more individuals, appointed or approved by the court: a trust for sale so constituted overrides prior equities. I have never seen one in practice, though they were discussed in *Re Leigh* (*No.* 2) [1927] 2 Ch. 13, and in *Re Parker* [1928] Ch. 247.

Section 27 (2) is the important provision: "Notwithstanding anything to the contrary in the instrument (if any) creating a trust for sale of land or in the settlement of the net proceeds, the proceeds of sale or other capital money shall not be paid to or applied by the direction of fewer than two persons as trustees for sale, except where the trustee is a trust corporation, but this subsection does not affect the right of a sole personal representative as such to give valid receipts for, or direct the application of, proceeds of sale or other capital money, nor, except where capital money arises on the transaction, render it necessary to have more than one trustee." The exact wording of this subsection is of extreme importance. It is only provided that "the proceeds of sale or other capital money" are not to be "paid to or applied by the direction of" one person. The subsection applies only where a transaction is to occur on which capital money arises. It is thus necessary to have two trustees where the land is sold outright, or where it is let upon a lease in consideration of a premium, or, for example, where part of the proceeds of sale of timber have to be capitalised. It does not apply, for instance, where the land is in lease and all that is required is for the trustee to manage it and receive the rents. It would not apply where some of the proceeds of sale have been invested in a mortgage, which it is desired to foreclose. And it did not apply where the trust for sale was a peculiar one in *Re Wight and Bests* [1929] W.N. 11. I have never understood why that case was not reported in the main Law Reports; though the facts were peculiar, it seems to deal with a question of principle. The land was vested in the vendor upon trust for sale, but the settlement contained the provision that any purchase money was to be paid to two other trustees. The purchaser objected to the vendor's title on the ground that he was a sole trustee for sale and so could not make title. Lord Maugham (then a judge of the Chancery Division) said that the present case was not affected by s. 27 (2): there was no application of capital money by the direction of the vendor, either within the language or the intention of that subsection. The judgment is very briefly reported, but it establishes quite clearly that the subsection means what it says and nothing more. *Re Myhill* [1928] Ch. 100, tends in the same direction. In that case land was vested in a sole trustee upon trust for certain persons in undivided shares on the last day of 1925. It was argued that the land could not vest in the existing trustee on the statutory trusts under sub-para. (1) of para. 1 of Pt. IV of Sched. I of the Law of Property Act, because the statutory trustee would be a trustee for sale, and a sole trustee for sale could not carry out the statutory trust by reason of s. 27 (2). Astbury, J., refused to listen to this argument, saying that s. 27 (2) "merely prevents the proceeds of sale being paid to or applied by fewer than two trustees."

Twice recently I have had occasion to consider the application of s. 27 (2) to proposals for partition under s. 28 (3). The power of partition under that subsection arises where proceeds of sale of land, whether arising by virtue of a statutory trust for sale or by virtue of any ordinary trust for sale, have become absolutely vested in various persons in undivided shares. The absolute vesting may be absolute vesting in a trustee of a derivative settlement (this is expressly laid down in the subsection), or it may be absolute vesting (in the sense of indefeasible vesting) in a fiduciary person such as an executor (see *Re Brooker* [1934] Ch. 610, and *Re Gorringe and Braybons' Contract* [1934] Ch. 614). What is not sufficiently absolute vesting is absolute vesting in a tenant for life, or for some other limited period (*Re Thomas* [1930] 1 Ch. 194). If one or more of the shares of proceeds of sale belongs to a lunatic, the consent of the committee or receiver is sufficient in place of that of the lunatic. If any such share is absolutely vested in an infant, the trustees for sale themselves may act on his behalf and may retain his partitioned portion until he comes of age (subs. (4)).

This power of partition is a rather limited one, and it is nowadays almost the only existing power of partition. The Partition Acts have been repealed, and an express power of partition is repugnant to the statutory trusts and therefore fails altogether in cases where the land is vested in statutory trustees. An express power can, of course, exist side by side with a non-statutory trust for sale. Where the land is held on the statutory trusts or where there is no express power in a private trust, the court has power to create an *ad hoc* power of partition under s. 57 of the Trustee Act, 1925. The court so acted in *Re Thomas*, *supra*, after holding that an express power had been destroyed by the imposition of the statutory trusts. Granted, however, that the power to partition is present, it can be exercised by a sole statutory trustee for sale. His conveyances to the partitioners will be good as there is no question of capital money passing to him.

A superficially more difficult question arises if there is to be any equality money, which presumably would have to be secured on the larger part of the partitioned land by a mortgage in favour of the other partitioner. Here, again, I think that there is no reason why the sole trustee should not act. What he is to do under the subsection is to give effect to the partition "by conveying the land so partitioned in severalty (subject or not to any legal mortgage created for raising equality money)." He will therefore convey Blackacre, the smaller close, to Black in fee simple; he will then charge Whiteacre with the payment to Black of £*x*, and finally convey Whiteacre to White. If the transaction was an ordinary mortgage, the mortgagee would be lending money to the mortgagor, and capital money would therefore have arisen. But in the present case no money is to pass. A is to convey the smaller close to one partitioner outright, he is to create a charge upon the larger close in favour of the partitioner of the smaller close, and is to convey the larger

close to the partitioner of it subject to the charge. No money passes. A trustee for sale has full right to create the legal mortgage term, and he has full right to convey the fee simple. Both these rights are vested in him by virtue of his possession of the fee simple and by the statute itself. They are only curtailed where their exercise would be inconsistent with express provisions of the Act. That is only so in cases covered by s. 27 (2), and s. 27 (2) only applies where a receipt has to be given for capital money.

Landlord and Tenant Notebook.

Walsh *v.* **Lonsdale.**

It is necessary in our profession to learn, sometimes to unlearn, and occasionally to relearn. When the Judicature Act, 1873, had been in force for a few years, the decision in *Walsh* v. *Lonsdale* (1881), 21 Ch. D. 9 (C.A.), illustrated the effect on the position of a tenant occupying under an agreement which had not been completed. The plaintiff, having taken possession of a mill after entering into an agreement for a seven years' lease, was held to be subject to the law of distress. The effect of the statute was succinctly stated by Jessel, M.R., in these terms: "A tenant holding under an agreement for a lease of which specific performance would be decreed stands in the same position as to liability as if the lease had been executed. He is not since the Judicature Act a tenant from year to year, he holds under the agreement, and every branch of the court must now give him the same rights." A few years later, in *Re Maughan; ex parte Monkhouse* (1885), 14 Q.B.D. 936, Field, J., dealing with a question whether a debtor occupying under a similar agreement held land burdened with onerous covenants, etc., roundly declared: "Since the Judicature Acts there is now no distinction, that I can see, between a lease and an agreement for a lease, because equity looks upon that as done which ought to be done." This, it will be seen, omitted the qualifications contained in the utterance of Jessel, M.R.; but even the proposition put forward by the learned Master of the Rolls was found to be too wide in at least two respects; in one of which, however, the position has since been restored by legislation.

First, then, anyone who consciously or unconsciously dismissed the qualifications referred to from his mind should have had his original ideas restored by *Inland Revenue Commissioners* v. *Derby* (*Earl*) [1914] 3 K.B. 1186, if not by *Lowther* v. *Heaver* (1888), 21 Ch. D. 289. In *Lowther* v. *Heaver* it appeared that a building agreement, while providing for re-entry if work should cease for twenty-one days, gave the builder a right to a lease of each house as soon as it was roofed in. The builder assigned the benefit of the agreement to the plaintiff (who had advanced money) and soon afterwards died. At that date some four houses were in the course of erection and, work having been suspended for more than twenty-one days, the building owner, the defendant in the action, took possession. The draft lease did not provide for a right of re-entry on work being suspended, and in the proceedings the defendant admitted (though he subsequently applied for leave to put the matter in issue, which was refused) that the roofing-in had been completed. Holding that the plaintiff was entitled to a decree of specific performance, Cotton, L.J., quoted with approval the passage from *Walsh* v. *Lonsdale* cited above. "The tenant," his lordship went on, "is entitled only in equity, it is true, to a lease; but being entitled in equity to have a lease granted, his rights ought, in my opinion, to be dealt with in the same way as if a lease had been granted to him, and do not depend upon its actually having been granted." This might serve to remind us that it was a condition precedent to the similarity between the two positions—that of a tenant occupying under an agreement and that of the grantee of a lease—that specific performance would be granted; and *Inland Revenue Commissioners* v. *Derby* (*Earl*) rammed the point home, for in that case reversion duty was successfully claimed from a lessor in respect of a surrender effected by operation of law in these circumstances: negotiations took place before the commencement of the relevant financial year, and by 5th April it had been agreed that the existing lease (which had some forty-nine out of seventy-five years unexpired) would be surrendered and a new term for 999 years granted on the fulfilment of certain conditions by the tenant. These were not all carried out till June. Horridge, J., held that though the tenant had possession and had the agreement before 5th April, he did not *hold under* the agreement till June. For specific performance would not have been decreed while the conditions remained unfulfilled.

But whether a specific performance *would* be decreed is not the only factor—other authorities have shown that the particular court must have jurisdiction to grant such a decree. This is, perhaps, suggested by the concluding words of the passage from Jessel, M.R.'s judgment in *Walsh* v. *Lonsdale*, which I have cited: "Every branch of the court must give him the same rights," "the court" being, of course, the High Court, and the branches uppermost in the speaker's mind being the Chancery and Queen's Bench Divisions. But there is no hint of any limitation in the judgments in *Lowther* v. *Heaver* and *Re Maughan; ex parte Monkhouse*, and the point first proved a stumbling-block in *Foster* v. *Reeves* [1892] 2 Q.B. 255 (C.A.), when a landlord brought an action for £17 10s. arrears of rent in a county court. He had sent the defendant, in May, 1890, a form of agreement for a tenancy for three years (and from year to year afterwards), to commence on 24th June of that year, and while the defendant had written undertaking to enter into such an agreement he had taken possession on 12th June. The claim included a claim for specific performance, but merits were never examined because the value of the premises exceeded £500. The county court judge held that he had no jurisdiction; on appeal it was argued that according to *Walsh* v. *Lonsdale* and *Lowther* v. *Heaver*, the defendant, if a court of equity would decree specific performance of the agreement, must be treated as holding under it; but Esher, M.R., while saying that the point was puzzling, pointed out that the ground of Jessel, M.R.'s decision was that since the Judicature Acts there was only one court, and the decision did not apply to a county court when it had no equitable jurisdiction in a particular dispute. Fry, L.J., described the position by pointing out that the amount claimed was an equitable debt. More recently, *Angel* v. *Jay* [1911] 1 K.B. 666, afforded another illustration of this principle, and it was decided that the words "the value of the property" in the County Courts Act, 1888, s. 67 (4), referred to the value of the freehold.

The relevant enactments in the Judicature Act, 1873, ss. 89 and 91, and the above-mentioned provision of the County Courts Act, 1888, have since been repealed and replaced by s. 44 of the Supreme Court of Judicature (Consolidation) Act, 1925, and s. 52 (1) (*d*) of the County Courts Act, 1934, respectively, and without any modification.

Must a party who relies on the willingness (and competence) of the court to grant specific performance of the tenancy agreement, so allege in his pleading? In *Walsh* v. *Lonsdale* the plaintiff actually asked for such a decree, and in *Lowther* v. *Heaver* it was all that was claimed. Cotton, L.J.'s description of the position of the parties under an unexecuted agreement in the latter case, as cited earlier in this article, does not suggest that any reference to specific performance would be required where such relief was not prayed for. In *Re Maughan; ex parte Monkhouse*, in which the proceedings were in the nature of a scramble for available assets, Field, L.J.'s remarks, also quoted above, leave no room for the suggestion that necessity for pleading the right in these cases would ever have occurred to him. But in *Swain* v. *Ayres*, *infra*, in which the question was whether a forfeiture notice was a condition

precedent to re-entry when a lease has not been executed, Esher, M.R., said, in his judgment: "Assuming that there had been a right to specific performance, the effect of such a holding, according to what the late Master of the Rolls said in *Walsh* v. *Lonsdale*, would be that the tenant must be treated in law as holding on the same terms as," etc. Later in the same judgment, however, Esher, M.R., commented on the fact that the defendant, who contended in answer to the claim for forfeiture (brought on the ground of non-repair) that despite the disrepair he would be entitled to specific performance, had not pleaded any circumstances "such as surprise or some other excuse" in support of that contention. The most recent authority on the point is *Gray* v. *Spyer* [1922] 2 Ch. 22 (C.A.), in which Sterndale, M.R., stated his view to be that the question ought to be pleaded except those cases in which the sole question was that of construction, and there was no dispute that, the construction once determined, the court would, of course, make a decree.

The actual decision in *Swain* v. *Ayres* (1888), 21 Q.B.D. 289 (C.A.), was that as an agreement for a lease was not a "lease" within the meaning of the Conveyancing Act, 1881, s. 14, no statutory notice need be given before taking proceedings for forfeiture on the ground of non-repair, despite the Judicature Acts and *Walsh* v. *Lonsdale*. This, in my submission, is a point on which unlearning may be followed by relearning; for while L.P.A., 1925, s. 146 (1), replacing the Conveyancing Act, 1881, s. 14 (1), likewise says "in a lease," subs. (5) of the later enactment now provides that for the purposes of the section, "lease" includes ". . . also an agreement for a lease where the lessee has become entitled to have his lease granted."

Our County Court Letter.

TERMINATION OF MILK CONTRACT.

In *Lloyd* v. *Teifyside Creameries, Ltd.*, recently heard at Aberayron County Court, the claim was for £251 as the price of goods sold, or, alternatively, as damages for breach of contract. The plaintiff was a dairy farmer, and his case was that he had supplied milk to the defendants since 1934. On the 22nd February, 1939, the plaintiff was convicted for selling milk not of the nature, quality and substance demanded, and was thereupon told by the defendants not to supply any more milk pending a decision of their committee. The plaintiff, however, continued to place churns on his stand, and the defendants collected them as usual until the 27th February. The plaintiff continued to place churns on the stand until the 16th May, but, as they were not removed, he took the milk back and fed it to the calves. The defendants had once informed the plaintiff that the contract had been suspended, but they afterwards asked him to resume the supply. He replied that he required to be paid for the milk placed on the stands, as the property therein had passed to the defendants. As the contract had not been terminated, the plaintiff was still bound to supply the defendants with milk, and could not dispose of it elsewhere. The defendants' case was that about 680 farmers supplied them with milk, and, owing to the poor quality of the plaintiff's milk, he was asked to express regret and to give an assurance with regard to the future. On his refusal no more milk was accepted, but this had nothing to do with the plaintiff asking for payment in respect of the milk not collected. The contract had been validly terminated. His Honour Judge Frank Davies observed that the legal standard of milk stipulated a content of not less than 3 per cent. fat. The percentage of fat in the plaintiff's milk had fallen to 2·1 per cent. at the end of 1938, and the defendants were entitled, under the contract, to refuse to accept further supplies. Up to the 20th March, when the plaintiff was given an opportunity to state his case, the contract was still valid. On that date the plaintiff was told that no more milk would be accepted unless he complied with certain conditions, and this implied the termination of the old contract, while offering the plaintiff a new contract, which he would not accept. The plaintiff was entitled to be paid for the milk delivered between the 28th February and the 20th March only, both dates inclusive. Judgment was given for the plaintiff for £13 13s. 11d., with costs.

THE SALE OF PHOTOGRAPHIC BLOCKS.

In *Fleet-Hammond Co., Ltd.* v. *Cole*, recently heard at Ipswich County Court, the claim was for £3 3s. 9d. as the price of a photographic block. The plaintiffs' case was that the defendant had signed an agreement to buy the block, which was to be supplied at the rate of 2s. 9d. per square inch of the block. The photograph was to appear in "County Illustrated," with an article describing the defendant's jewellery and watchmaking business. On ascertaining the price the defendant had refused to accept delivery. The defendant's case was that his signature to the agreement had been obtained by misrepresentation and/or fraud. He had been informed by the traveller that 2s. 9d. was the total cost, not the cost per square inch, and he had signed the agreement in a dark part of the shop without reading the contents. Evidence was tendered of other business men who had had a similar experience, but His Honour Judge Hildesley, K.C., held that it could not be assumed that other people had been induced to sign by the same misrepresentation. The evidence was also inadmissible for the purpose of impugning the credibility of the plaintiffs' traveller. Having viewed the part of the shop at which the contract was signed, His Honour held that the defendant had established his defence. Judgment was accordingly given in his favour, with costs.

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.*]*

Clients' Indemnity Fund.

Sir,—Some critic has suggested that all solicitors acting as executors or trustees, or who hold clients' moneys for over three months (and what practising solicitor does not) should obtain a fidelity bond.

The expense and trouble involved would obviously be enormous. Nor would it have the general effect on the public that the organisation of their own fund by solicitors has already begun to have.

The simple contribution of £5 per annum by every solicitor will more than cover defalcations over a long period, and with the other measures taken I have no doubt that our contributions will soon be reduced. Individual indemnity bonds require more forms and inquiries and would cost nearly three times as much. Further, where the solicitor has acted criminally, and in many other instances, there would be disputation as to whether the indemnity operated.

The introduction of new executorship and trustee work to the profession will, I am confident, in the first few years of working alone far exceed the annual contributions to the fund in spite of increasing advertising by banks and corporations. Even though the present year is probably a difficult time to introduce the fund, for goodness sake, let us all co-operate to make it work without grousing. For once we have an opportunity of showing that solicitors can co-operate for the benefit of the public and themselves.

It is about time we had a Law Society sub-committee to quietly "boost" the profession as a whole to the public; short of that this fund is a very good opportunity for doing so.

New Square, Lincoln's Inn, W.C.2.
11th March, 1940.

AMBROSE APPELBE.

"Monopoly Professionalism."

Sir,—I venture to suggest that the leaders of the legal profession should devote their attention to getting back work which has been filched by bankers, insurance companies, building societies and other capitalist combines, or spreading the work equitably over the profession.

The whole question requires analysis to rectify the fundamental changes which have taken place in the economic system. What the profession is suffering from is "monopoly professionalism," just as business is suffering from "monopoly capitalism."

Monopoly capitalism has brought about a state of affairs which in the immediate present circumstances is breaking down the economic system. In other words, the big amalgamated leaders of capitalism who control all industries and businesses are gradually crushing out the small independent business man.

Just as monopoly capitalism has developed so also concurrently has monopoly professionalism. The result is that formerly, where work of small business men was spread over a large body of solicitors, and solicitor and client were on the basis of friendship and personal contact, business is now mostly in the hands of the monopoly capitalists, that is to say, banks, insurance companies, building societies and other large concerns. The result is that professional work which was formerly distributed over a large number of independent solicitors, now flows through the control and direction of big monopoly capitalists into the offices of big monopoly professional solicitors, where in fact no professional contact ever arises between solicitor and client in the true sense of the word. Furthermore, these combines employ a salaried solicitor and get costs which should go to solicitors personally.

The professional firms are in a sense professional financiers taking profits from capital (ownership of goodwill) as distinct from solicitors having contact personally with the intimate client.

Advertisements appear for *qualified* professional solicitors at wages equal to that paid to a corporation road sweeper. When this state of affairs has arrived, it is clear only radical changes in the fundamental constitution of the profession can rectify the absurdities and injustices brought about by the monopoly professionalism.

There is no solution under our present system and all restrictions and rules do not help the young man or the small professional man, but only consolidates the power of monopoly professionalism to exploit the young man.

Solicitors should *not* be dependant on the will of monopoly capitalists, but should receive an equitable share of work and be paid for all the work he does *personally* as he should do—instead of large profits being made out of him—as profit income through the operation of monopoly professionalism—which owns capital (i.e., goodwill). Costs are supposed to be paid, for personal professional work done—*not* for ownership of capital—or go to swell the profits of an industrial combine.

I venture to put forward this suggestion which is constructive for consideration. The profession should have the vision to see the present patchwork, unjust state of affairs cannot be continued indefinitely.

4th March. "VERITAS."

Reviews.

Law in the Light of History. Book II. England in the Middle Ages. By C. H. S. STEPHENSON, LL.D., and E. A. MARPLES. 1940. Demy 8vo. pp. xi and (with Index and Maps) 316. London: Williams & Norgate, Ltd. Price 18s. net.

This second volume of this enterprising work carries the average English reader onto ground more familiar to him than did the first, but yet not familiar enough; for if he knows nothing at all about mediæval Europe he has only the haziest notion of the social institutions of mediæval England and is therefore a ready prey for any crazy theorist who cares to spin a conception of history out of a sequence of generalisations. This book is a useful ingredient in an antidote. In about three hundred pages the authors trace the legal development of England in relation to its political history from the Saxon invasion to the death of Richard III and the end of the Middle Ages. As a handy reference book for students of legal history it has an obvious place waiting for it. On the debit side one must place the over-sketchiness of its sketch maps and the occasional lopsidedness of its social and political history, the result, doubtless, of the exigencies of compression. Thus, "Abbeys," the first word in the index, refers to one page only on which we are told that in Norman times "the heads of many of the more wealthy abbeys" were bad landlords. Either more than that or nothing at all should have been said of an institution which for centuries influenced almost every phase of the national life. "Wyclif" has four references. On the credit side must go the painstaking legal analysis, period by period, particularly useful in showing the debt which the House of Commons owes to the old common lawyers, a debt which in these days of bureaucracy it is important that the politicians should recall.

Industrial Law. By H. SAMUELS, M.A., of the Middle Temple, Barrister-at-Law. Second Edition, 1940. Demy 8vo. pp. xxi and (with Index) 249. London: Sir Isaac Pitman and Sons, Ltd. Price 15s. net.

The second edition of this work appears under a more compendious title than the first, which was entitled "The Law Relating to Industry." The passing of the Factories Act, 1937, has necessitated various alterations, and the text has now been revised and brought up to date. The recent emergency enactments have been summarised in App. I, in so far as their provisions more particularly affect employers and employees. Chapter IX contains an able exposition of the law as to welfare schemes, which are playing an increasingly important part in the organisation of industry.

The Municipal Year Book and Encyclopædia of Local Government Administration, 1940. Edited by JAMES FORBES. Demy 8vo. pp. lxiv and 1350. London: The Municipal Journal, Ltd. Price 35s. net.

The 1940 edition of this work—the 44th annual issue—has been completely revised and brought up to date. It comprises fifty-one sections, of which forty-two are devoted to all the important branches of the civic administration, and the remaining nine sections to the descriptive records of National and Local Authorities and names and addresses of Members of Councils in Great Britain, Northern Ireland and Eire, and also lists of Joint Authorities.

Among the outstanding sections are those relating to Local Government Legislation and Law Cases, Roads, Transport, Finance, Rating and Valuation, Housing and Slum Clearance, Town and Country Planning, Public Health, Education, Parks, Public Assistance, Water Supply, Public Cleansing and Sewage Disposal, Civil Aviation, Police Services, etc.

The Air Raid Precautions and Fire Services are dealt with extensively. Local Government Administration has, of course, been materially affected by the war, and both in the general survey of the year's administration and in the various appropriate sections the salient changes as a result of war-time conditions have been detailed. Emergency Statutes, Rules, Orders, Regulations, and Ministerial instructions are given in concise form for speedy reference.

An improvement this year is the thumb-indexing in place of tabs, marking all important sections and materially facilitating reference.

To-day and Yesterday.

LEGAL CALENDAR.

18 MARCH.—Mr. Justice Jermyn, who died on the 18th March, 1655, was one of the Commonwealth judges, for, though appointed to the King's Bench in 1648, he retained his office after the execution of Charles I, when his court became the Upper Bench. At the Bar to which he had been called by the Middle Temple in 1612, he had a considerable practice. One of the last great cases in which he was engaged was the prosecution of Judge Jenkins, the Welsh Royalist Judge in 1647.

19 MARCH.—On the 19th March, 1830, Ellen Connell was tried at the Tralee Assizes for the murder of her husband, and her lover, Denis M'Carthy Launey, was tried with her. They were both found guilty. She was thirty-six years old and he was forty-nine. After the fair at Cahir they had killed the man on the seashore and taking the body out in a boat in the darkness they had thrown it into the sea, which had washed it up two days later. The neighbours suspected well enough what had happened and the evidence reads like an Irish play: "Ellen Connell came to my house. I told the woman not to let her in, that the evil spirit would come with her. I said, 'You wretched unfortunate woman, where are you going to? You devil of a woman, why did you kill your husband?'" Finally she surrendered to the police and denounced her lover.

20 MARCH.—On the 20th March, 1752, the condemned prisoners in Newgate Gaol made a bold attempt to escape. At eight o'clock in the evening, as Mr. Sinclair, the turnkey and two assistants were locking the cells, they were attacked with knives by two notorious street robbers. With the help of two loyal prisoners he got away and bolted an outer door. A party of Guards sent from the Tower of London soon arrived and when they were reinforced by the appearance of the Lord Mayor and the Sheriffs the mutineers were summoned to surrender. They refused and had to be overcome by force.

21 MARCH.—On the 21st March, 1872, a brilliant career came to a premature end when Sir Travers Twiss resigned all his offices. His reputation as an authority on international law was European. He had been Chancellor of the Diocese of London, Queen's Advocate General and Advocate General to the Admiralty. Then all was shattered. Ten years before he had married in Brussels a lady who was supposed to be the orphan daughter of a Polish officer. As his wife she lived irreproachably, but in 1872 Sir Travers had to prosecute a fellow called Chaffers, a solicitor from the legal underworld, who had published a libel attacking the lady's former mode of life. He defended himself in person, and under his virulent cross-examination she broke down. Her husband then resigned from public life.

22 MARCH.—Mr. Justice Bray died at his London house in The Boltons, Kensington, on the 22nd March, 1923, at the age of eighty.

23 MARCH.—In the year of the centenary of the entry of New Zealand into the Empire it is well to remember an odd episode in the life of Edward Gibbon Wakefield, who really brought it about. On the 23rd March, 1827, he was tried at the Lancaster Assizes for abducting an heiress from a boarding school, marrying her by fraud at Gretna Green. He had represented to her that her father was ruined and that only compliance could save his fortune. This short cut to affluence did not serve, for he was sentenced to three years' imprisonment and the marriage was annulled by Act of Parliament. While in gaol he seriously studied the problems of colonisation and turned his face to a great career.

24 MARCH.—Sir John Inyn, Chief Justice of the King's Bench, died on the 24th March, 1440, a year after being promoted to that place and seventeen years after being appointed a judge. It is notable that in 1404 he had ignored two summonses to take up the degree of serjeant and had finally been compelled by Parliament to do so.

THE WEEK'S PERSONALITY.

It is not many judges who can trace so anciently distinguished an ancestry as Mr. Justice Bray. At Shere in Surrey, where he was born, his family had held large estates since the fifteenth century and he eventually succeeded to them. Apart from the law, nothing diverted his profound and constant attachment to this countryside to which tradition bound him. Among his forbears he traced a connection with Sir Thomas More. It was in 1904, at the age of sixty-one, that he was appointed a Justice of the King's Bench Division, and late though his promotion came, he was to give nineteen years service as one of the ablest of the puisne judges. His keen insight, vigorous personality, and robust common sense marked him out among his colleagues, though a certain austerity in his nature prevented him from ever being popular in the ordinary sense. He bore his advancing years with extraordinary ease and may be counted among those who fell at their posts. In March, 1923, when he was well over eighty, he was taken ill while sitting in court. He died at his house in Kensington a fortnight later. They buried him at Shere in the earth to which he belonged.

A STRANGE SITTING.

The Easter Vacation seems the appropriate time to recall the burning of the Cork Courthouse on Good Friday, 1891. The populace generally regarded it as a mark of celestial displeasure attracted by the impropriety of holding a trial on that day. Lord Chief Justice O'Brien was responsible and they said: "Since Pontius Pilate no judge dare do it but Pether." The first notice that anything abnormal was happening was given by one of the prisoners who intervened in the proceedings to point out to Judge Munroe that the roof above his head was on fire. Coolly remarking that it was nearly time for lunch, the judge adjourned the proceedings for three-quarters of an hour to allow the fire brigade to operate. The danger did not then seem imminent and several persons remained in court till suddenly the centre of the ceiling fell in. Very soon the whole building was in flames which reduced it to a blackened shell. For long afterwards every document lost in Ireland was accounted for as having perished in this conflagration. In 1895, immediately after the rebuilding, there was another Good Friday sitting but no fire.

BEGINNERS' DIET.

A journalist, interviewing dockers in Glasgow recently, visited the home of one, where his old mother recalled days when her mother was housekeeper at Queen's College in Belfast and was always mothering students who lacked either the time or the money to have a good dinner. To one particular favourite she would take a generous cut off her Sunday joint carried in her apron to his rooms half a mile away. "You will never make a name in the world if you don't eat up, Alannah," she would say. And make a name he did, for he became Best, C.J., and he was probably not sorry to look back at those laborious days, for lawyers seem to enjoy the memory of early trials. Lord Eldon was fond of telling his friends how in his early married life "many a time have I run down from Cursitor Street to Fleet Market to buy sixpenn'oth of sprats for our supper." It is told of Lord Erskine that in his student days he "resided in small lodgings near Hampstead and openly avowed that he lived on cow-beef because he could not afford any of superior quality." In later years he used often to tell how at that time his diet was cow-heel and tripe.

Notes of Cases.

House of Lords.

Finska Angfartygs A/B and Others *v.* Baring Brothers and Co., Ltd.

Lord Maugham, Lord Atkin, Lord Russell of Killowen, Lord Wright and Lord Romer.
13th December, 1939.

DEBT—SHIPS REQUISITIONED BY FOREIGN GOVERNMENT—MONEY DUE—SUMS IN BANK IN LONDON—WHETHER ASSIGNED TO SHIPOWNERS.

Appeal from a decision of the Court of Appeal (82 SOL. J. 603; 54 T.L.R. 1031) affirming a decision of Luxmoore, J. (81 SOL. J. 1022; 54 T.L.R. 147).

The plaintiffs were Finnish shipowners whose ships were requisitioned in 1916 and 1917 by the former Government of Russia for use in the Great War. They claimed that certain moneys were payable to them for the use of the ships and as compensation in respect of ships sunk by the enemy. The defendants had in their possession large funds deposited with them as bankers by the Russian Government before the revolution which resulted in the establishing of the U.S.S.R. Part of those funds stood to the credit of a separate account called the "Compte Spécial." Complicated procedure was necessary to effect payments out of that account. Certain transactions claimed in the action to be assignments of a sum of £456,000 standing to the Russian Government took place in the autumn of 1917 in Petrograd. Luxmoore, J., dismissed the action, and the Court of Appeal upheld that decision, holding that the customary machinery for effecting payment had been set in motion but had stopped before any payment was in fact effected. The shipowners appealed. (*Cur. adv. vult.*)

LORD MAUGHAM agreed with the opinion of Lord Russell of Killowen.

LORD ATKIN said that the reasons contained in the opinion of Lord Russell of Killowen were compelling to show that the appellants had not the legal rights which they claimed. He would point out that the fund against which they claimed was provided by the British Government under arrangement with the then Russian Government as an advance to that government against Russian treasury bills for the very purpose of enabling that government to meet claims of the present kind. Only the delay of a few days prevented the necessary order for payment of the present claim from being given to the bank. In the result the respondents had been left with a sum of some millions in their hands which certainly did not belong to them. The present Russian Government appeared to disclaim all interest in it. It would seem only reasonable that measures should be taken by the British Government, acting with the bank, to secure that the money should reach the creditors to pay whom it was provided.

LORD RUSSELL OF KILLOWEN said that if he could, consistently with true legal principles, accede to the claim of the Finnish shipowners, he would gladly do so, but their claim could not succeed. The fresh evidence adduced before the Court of Appeal related to events over twenty years old, and was inconsistent with the documents which were the original foundation of the plaintiffs' claim. Another aspect of that evidence, to which he thought it right to call attention, was that it was given by an affidavit made in English by one who was not an Englishman. That affidavit, though drafted with great care, was likely to mislead unless examined with equal care, and when so examined did not in fact prove that any allocation of the sum in question was made. The truth seemed to be that, if everything had proceeded as all anticipated, the moneys would in due course have been paid to the Finnish shipowners out of the Compte Spécial at the bank; but some sand from the Lenin revolution stopped the machinery and the debt remained unpaid. The appeal must be dismissed.

LORD WRIGHT and LORD ROMER concurred.

COUNSEL: *Pritt*, K.C., and *Idelson*; *Valentine Holmes* and *Warlow*.

SOLICITORS: *Roney and Co.*; *Slaughter and May*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

McQuaker *v.* Goddard.

Scott, MacKinnon and Clauson, L.JJ.
8th February, 1940.

NEGLIGENCE — ANIMAL — CAMEL — WHETHER A DOMESTIC ANIMAL—VISITOR TO ZOOLOGICAL GARDEN BITTEN—PROPRIETOR NOT LIABLE IN ABSENCE OF *scienter*.

Appeal from a decision of Branson, J., at Kingston Assizes.

The plaintiff was bitten by a camel at Chessington Zoo, and sued the proprietor, Goddard, for damages for negligence. There was no evidence that the defendant had any knowledge of the camel's propensity to bite. Branson, J., accordingly, having decided that a camel was a domestic animal, ruled that there was no case to go to the jury. The plaintiff appealed.

SCOTT, L.J., said that, by the old common law of England, domestic animals were regarded in quite a different light from wild animals, which were assumed to be dangerous to human beings, while domestic animals were not so regarded. The owner of a wild animal must keep it in at his peril; in the case of domestic animals, the presumption was the other way; the plaintiff had to prove that the defendant was aware of a particular propensity in the animal to injure human beings; unless that knowledge were proved, there was at common law no liability on the defendant. It was argued that the camel stood in a different category from ordinary domestic animals because it was not domestic in England. That argument was fallacious; if the animal did not exist in a wild state in any part of the world it had ceased to be a wild animal; it had become trained to the uses of man and *ex hypothesi* had become trained to associate with men. It was well to remember that it was the function of the judge, and not of the jury, to decide whether an animal belonged to the class of wild animals or that of domestic animals. Branson, J., had rightly decided that the camel must be regarded as a domestic animal. If that were so, any cause of action which the plaintiff had could not be put on the higher ground of absolute duty as in the case of a wild animal likely to escape and do damage. He must either prove knowledge by the defendant of a general propensity in the camel to bite, or else establish a case of negligence. There was no evidence that at the time the plaintiff was injured the defendant had any knowledge that this camel had a propensity to bite. It was submitted that, as the defendant was the keeper of a zoological garden, it should be presumed that he had expert knowledge of the habits of camels and knew that they had a general propensity to bite; but on the facts as proved in evidence no such propensity was established. There was, further, no evidence of knowledge by the defendant that this particular camel had a propensity to bite and no evidence that it had in fact a propensity to bite. The judge was right in not leaving any issue on that part of the case to the jury. The plaintiff further contended that the defendant should have known that so flimsy and ineffective a fence as the wire-netting provided was not sufficient; but that submission really rested on the assumption that the defendant knew that there was danger of the camel's biting; if he did not know that, there was no duty on him to have a more effective fence. *Aldham* v. *United Dairies (London), Ltd.*, 56 T.L.R. 201; 84 SOL. J. 43, was a case where there was independent evidence of negligence, and it had no bearing on the present case. The appeal must be dismissed.

MACKINNON and CLAUSON, L.JJ., agreed.

COUNSEL: *Harold Brown*; *Neve*, K.C., and *Pereira*.

SOLICITORS: *Gordon Gardiner, Carpenter & Co.; Watson, Sons & Room.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

In re a Bankruptcy Notice.
In re the Courts (Emergency Powers) Act, 1939.

MacKinnon, Clauson, L.JJ., and Charles, J.
21st February, 1940.

EMERGENCY POWERS—APPEAL ALLOWED WITH COSTS—LEAVE TO ENFORCE JUDGMENT OF COURT OF APPEAL NOT OBTAINED—BANKRUPTCY NOTICE ISSUED FOR COSTS—VALIDITY—"OTHERWISE THAN IN RESPECT OF COSTS"—MEANING—COURTS (EMERGENCY POWERS) ACT, 1939 (2 & 3 Geo. 6, c. 67), ss. 1 (1) (*c*) and 3 (*b*).

In 1938 the applicant commenced proceedings against a limited company claiming damages for breach of contract. On the trial of the action early in 1939 judgment was obtained by the applicant for a substantial sum by way of damages and costs. On appeal the order of the court below was reversed and the appeal was allowed with costs, which were taxed. A bankruptcy notice was then issued for the costs and the applicant applied *ex parte* for a day to be appointed by the Registrar in Bankruptcy for the hearing of an application to set aside the bankruptcy notice on the ground that leave had not been obtained to proceed to the enforcement of the order made by the Court of Appeal for the payment of the said costs. The learned Registrar refused to fix a day, holding that a bankruptcy notice can issue in a case coming under the Courts (Emergency Powers) Act, 1939, s. 1, subs. (1), proviso (*c*), without leave having been first obtained to proceed for the enforcement of the judgment or order. The applicant applied to the Court of Appeal *ex parte* under the provision of R.S.C., Ord. 58, r. 10, for a day to be appointed as he had requested in the original application.

The Courts (Emergency Powers) Act, 1939, s. 1, subs. (1), provides that: "Subject to the provisions of this section, a person shall not be entitled, except with the leave of the Court, to proceed to execution on, or otherwise to the enforcement of, any judgment or order of any Court (whether given or made before or after the commencement of the Act) for the payment or recovery of a sum of money: Provided that nothing in the subsection shall apply to . . . (*c*) any judgment or order under which no sum of money is recoverable otherwise than in respect of costs."

Section 3 (1) of the Courts (Emergency Powers) Act, 1939, provides that: "For the purpose of the Act . . . (*b*) a person entitled to the benefit of a judgment or order, who issues a bankruptcy notice . . . shall be deemed to be proceeding to the enforcement of that judgment or order." The applicant contended that the words "any judgment or order under which no sum of money is recoverable" referred to one of the many cases where no sum of money is recoverable, e.g., an order for a mandatory injunction, in which there would be no sum of money recoverable otherwise than in respect of costs, and that in such a case leave was not to be required to enforce the judgment or order otherwise than in respect of the costs.

CLAUSON, L.J., dismissing the application, said the restriction on execution and other remedies contained in s. 1 (1) only applied to a judgment or order for the payment or recovery of a sum of money.

MACKINNON, L.J., agreed and said that in his opinion the wording of subs. 1 (1) (*c*) was clear and meant that no leave was required where there was a judgment or order under which there was no sum of money recoverable otherwise than in respect of costs.

CHARLES, J., agreed.

COUNSEL: *G. F. Kingham.*,

SOLICITORS: *Theodore Goddard & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Appeals from County Courts.

Menzies *v.* United Motor Finance Corporation.

Slesser, Luxmoore and Goddard, L.JJ.
7th February, 1940.

HIRE PURCHASE—MOTOR CAR—DEFAULT IN PAYMENT OF INSTALMENTS—SEIZURE OF CAR—RIGHT OF HIRER TO RECOVER INSTALMENTS PAID—WHETHER PURCHASE PRICE NOT MORE THAN £50—WHETHER FIRST PAYMENT INCLUDED—HIRE PURCHASE ACT, 1938 (1 & 2 Geo. 6, c. 53), s. 11.

Appeal from Marylebone County Court.

The plaintiff, who wished to obtain a loan of money on the security of a motor car owned by her, agreed with a garage to treat the car as having been sold to them and then signed a proposal form for a hire-purchase agreement with regard to the car addressed to the defendants, a finance company. The defendants accepted the proposal and a hire-purchase agreement was entered into which acknowledged a payment of £25 by the plaintiff to the garage proprietor (although such payment was never in fact made) as a first payment in consideration for the option to purchase the car and provided that the plaintiff should pay the defendants the balance of the purchase price by twelve monthly instalments of £3 18s., making £37 in all. The plaintiff paid seven instalments and then fell into arrears, whereupon the defendants seized the car, purporting to act under their powers in the agreement. The plaintiff brought an action against the defendants claiming, under s. 11 of the Hire Purchase Act, 1938, repayment of the instalments which she had paid, amounting to £21 11s. 8d. By that section: "(1) Where goods have been let under a hire-purchase agreement, and one-third of the hire-purchase price has been paid . . . the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than by action. (2) If an owner recovers possession of goods in contravention of the foregoing subsection, the hire-purchase agreement, if not previously determined, shall determine and—(*a*) the hirer shall be released from all liability under the agreement and shall be entitled to recover from the owner in an action for money had and received all sums paid by the hirer under the agreement . . ." By s. 1 (*a*) of the same Act: "This Act shall apply in relation to all hire-purchase agreements . . . under which the hire-purchase price . . . does not exceed—(*a*) where the agreement relates to a motor vehicle . . . the sum of £50." And by s. 21, "hire-purchase price" is defined as meaning "the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of goods to which the agreement relates." The county court judge dismissed the plaintiff's claim. The plaintiff appealed.

SLESSER, L.J., allowing the appeal, said that the only answer to the appellant's claim to recover the instalments which she had paid was to be found in the argument that the Act did not apply to the agreement in question, because that agreement related to a hire-purchase transaction in which the price was more than £50. The total liability under the agreement was £37, but it was said that the total purchase price was £62 by reason of the first payment of £25. In truth, that payment was never made to the respondents and formed no part of the hire-purchase payments. Where persons hired with an option to purchase for a first payment down and subsequent payments by instalments, the first payment very likely would be a part of the total sum payable under the hire-purchase agreement. On the facts of the present case, however, the respondents never received the first payment at all from the hirer, but it was notionally paid to a third party. The value of the car was entirely irrelevant. The only question was what was the hire-purchase price. It was clear beyond question that the hire-purchase price was £37 and consequently the transaction was within the Act, and the respondents had committed a breach of s. 11 of the Act and the appellant was entitled to recover the money which she had paid. The appeal, therefore, succeeded.

LUXMOORE and GODDARD, L.JJ., gave judgments agreeing that the appeal should be allowed.

COUNSEL: *H. P. J. Milmo; H. V. Lloyd-Jones.*

SOLICITORS: *Lewis & Raynes; Kinch & Richardson*, for *Barrett & Thomson*, Slough.

[Reported by H. A. PALMER, Esq., Barrister-at-Law.]

N. V. Amsterdamsche Lucifersfabricken *v.* H. & H. Trading Agencies, Ltd.

Slesser, Luxmoore and Goddard, L.JJ. 12th February, 1940.

COSTS—CLAIM AND COUNTER-CLAIM—REMITTED ACTION—CLAIM ADMITTED—ACTION TRIED IN COUNTY COURT ON COUNTER-CLAIM—TAXATION OF COSTS.

Appeal from Westminster County Court.

The plaintiffs, a Dutch company, commenced an action against the defendants in the High Court claiming £92 9s. 10d., being the price of goods sold and delivered, less a certain deduction for commission. The action was remitted to the county court, where the defendants put in a defence and counter-claim. The defendants thereby admitted liability on the claim, but counter-claimed for a sum of £72 2s. 3d., which they said was due to them from the plaintiffs on account of commission, and they paid £20 7s. 7d. into court. At the trial the county court judge found that there was £55 due to the defendants on account of commission and an order was drawn up by the registrar adjudging that the plaintiffs recover against the defendants £72 3s. 9d. for debt and £74 16s. 9d. for costs, and that the defendants recover on the counter-claim £55 for debt and £39 14s. 2d. for costs. On an appeal to the judge on the question of costs, the defendants contended that since there was no issue litigated in the county court on the plaintiffs' claim, which was admitted, no apportionment of the costs should be made as between the claim and the counter-claim, but that the matter should be treated only as a claim by the defendants for their commission, on which they had substantially succeeded. The county court judge upheld the decision of the registrar. The defendants appealed.

SLESSER, L.J., allowing the appeal, said that in his view the defendants' contention was sound. As Atkin, L.J., said in *Christie* v. *Platt* [1921] 2 K.B. 17, the court had to look at the substance of the matter. What had to be considered in the present case was whether the defendants were entitled to the costs which they had to incur in the county court by reason of the plaintiffs resisting their claim for commission, having regard to the fact that the plaintiffs had brought an action in the High Court for an amount which had been admitted by the defendants before the action really began in the county court, so that it was unnecessary for the plaintiffs to incur any further costs. The registrar should have taxed the plaintiffs' costs on the principle that, after the defence was delivered in the county court, their claim was admitted and they were not entitled to incur any further costs except the costs of setting down and obtaining leave to proceed; and the defendants' costs should have been taxed on the principle that they were successful in the only matter litigated in the county court. The defendants were therefore entitled to succeed and the appeal would be allowed.

LUXMOORE and GODDARD, L.JJ., agreed.

COUNSEL: *T. H. Tilling; A. S. Diamond.*

SOLICITORS: *Theodore Bell, Cotton & Curtis; J. N. Nabarro & Sons.*

[Reported by H. A. PALMER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

***In re* Arthur James Griffiths' Application.**
***In re* Courts (Emergency Powers) Act, 1939.**

Morton, J. 30th January, 1940.

PRACTICE—VENDOR AND PURCHASER—FAILURE TO COMPLETE—ORDER TO FORFEIT DEPOSIT—LEAVE TO APPEAL—COURTS (EMERGENCY POWERS) ACT, 1939 (2 & 3 Geo. 6, c. 67), s. 1, subs. (2) (*a*) (iv).

The purchaser having paid a deposit, failed to complete. The vendor took out a summons in accordance with the requirements of s. 1 (2) (*a*) (iv) of the Courts (Emergency Powers) Act, 1939, for leave to forfeit the deposit. Morton, J., having granted such leave, the purchaser applied for leave to appeal against his decision.

MORTON, J., said he would grant leave to appeal, so far as such leave might be necessary. In his opinion leave was necessary, since his order was an interlocutory order which did not decide the rights of the parties.

COUNSEL: *Skone James.*

SOLICITORS: *Gustavus Thompson & Sons*, for *R. G. B. Regge*, Walton-on-Naze, Essex.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

***In re* Harris's Settlement; Dent *v.* Harris.**

Farwell, J. 6th February, 1940.

SETTLEMENT—PROTECTIVE TRUSTS—STATUTORY POWER OF ADVANCEMENT—CONSENTS REQUIRED—OBJECTS OF DISCRETIONARY TRUSTS—TRUSTEE ACT, 1925 (15 Geo. 5, c. 19), ss. 32 (1) (*c*), 33.

By a voluntary settlement made in 1935 the settlor declared that the trustees should stand possessed of the annual income of the investments which had been assigned to them upon protective trusts for the benefit of himself during his life and from and after his death upon trust for his son and daughter in equal shares on their both attaining the age of twenty-one years, provided that, if either predeceased the settlor, the trust fund was to be held on trust for the survivor absolutely on attaining twenty-one. If neither child survived the settlor the trust fund was to be held on trust for the settlor. The settlement contained no express power of advancement. The settlor had requested the trustees to exercise the statutory power of advancement conferred by s. 32 of the Trustee Act, 1925, and raise certain moneys out of the capital of the presumptive share of the son, who was an infant, to provide for his education. This summons was taken out by the trustees to determine whether they had power, with the consent of the settlor or with the consent of any and what other persons, to exercise the power of advancement conferred by s. 32. When the summons was issued there had been no forfeiture of the settlor's life estate. The persons who would be entitled under the discretionary trusts, should they come into operation, were at that date the settlor, his wife and his son and daughter, who were all defendants to the summons. The Trustee Act, 1925, s. 32, by subs. (1), confers power to apply capital for the advancement of any person entitled to the capital of the trust property provided that "(*c*) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless such person is in existence and of full age and consents in writing to such payment or application."

FARWELL, J., said the membership of the discretionary class was fluctuating and would not necessarily always consist of the four defendants. No consent was required, apart from that of the settlor, to the exercise by the trustees of the statutory power of advancement.

COUNSEL: *Salt; E. Ryder.*

SOLICITORS: *Abbott, Anderson, Braithwaite & Whittaker.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

A. Lewis & Co. (Westminster), Ltd. *v.* Bell Property Trust, Ltd.

Simonds, J. 8th February, 1940.

RESTRICTIVE COVENANTS—PREMISES NOT TO BE USED FOR SALE OF TOBACCO, CIGARS AND CIGARETTES—PREMISES USED AS A TEASHOP—CIGARETTES SOLD—ALLEGED BREACH OF COVENANT.

By a lease made 7th June, 1937, the defendants leased shop premises to the plaintiffs for twenty-one years. The

plaintiffs covenanted not to use the premises for any purpose other than the business of a tobacconist. The defendants covenanted that, so long as the demised premises were so used, they would not suffer any adjacent or neighbouring premises to be used for the purpose of the sale of "tobacco, cigars and cigarettes." Subsequently, in the same year, the defendants leased adjoining premises to the A.B.C. Co., Ltd. This lease contained a covenant by the lessees not to use the premises for any purposes other than those of a restaurant or teashop. These lessees sold cigarettes to their customers, but not cigars or pipe tobacco. The cigarettes were sold at the cashier's desk and were generally purchased by customers as they were paying their bills. Few people entered the shop merely to purchase cigarettes. In this action the plaintiffs sought an injunction to restrain the defendants from permitting the A.B.C. Co., Ltd., from selling cigarettes in breach of covenant in the plaintiffs' lease.

SIMONDS, J., dismissing the action, said the question was whether the A.B.C. Co., Ltd., were carrying on the business of the sale of "tobacco, cigars and cigarettes" in the restaurant and teashop which had been let to them. He was of opinion that they were not carrying on the business of tobacconists. They were carrying on the business of a restaurant and teashop, which involved the sale of various articles of food and drink, confectionery and cigarettes. The A.B.C. Co., Ltd., was not carrying on two businesses, one of which was in breach of covenant as in *Buckle* v. *Fredericks*, 44 Ch. D. 244; *Fitz* v. *Iles* [1893] 1 Ch. D. 77. He also referred to *Attorney-General* v. *Plymouth Corporation*, 99 L.T. 793; *Stuart* v. *Diplock*, 43 Ch. D. 343. Although they sold cigarettes, which was an almost universal practice in restaurants and teashops, they could not be said to be carrying on the business of the sale of "tobacco, cigars and cigarettes."

COUNSEL: *Wynn Parry*, K.C., and *Watmough*; *Harman*, K.C., and *Strangman* (for *Andrew Clark*, on war service).

SOLICITORS: *Zeffertt, Heard & Morley Lawson*; *Simmons and Simmons*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Rantzen's Settlement. *In re* Rantzen's Deed of Appointment. Rantzen *v.* Rantzen.

Morton, J. 9th February, 1940.

SETTLEMENT—CONSTRUCTION—POWER TO APPOINT—"AFTER ANY MARRIAGE"—APPOINTOR MARRIES—WIFE DIES—WHETHER POWER EXERCISABLE.

By a settlement made in 1910 certain trust funds were settled, in effect, upon protective trusts for the benefit of the settlor during his life. The settlor was given a general testamentary power of appointment and, in default of appointment, the trust funds were to be held on trust for those who at his death, if he had died intestate, would have become entitled to his personal estate. The settlement contained the following proviso: "Provided always that . . . it shall be lawful for the settlor at any time or times and either in contemplation of or after any marriage of the settlor by any deed or deeds to appoint that either the whole of the . . . trust funds or any part thereof shall thenceforth be withdrawn wholly or partially from the operation of this present settlement and be held upon such trusts and with such powers as shall be declared by such settlement for the benefit of the settlor and any wife of his and his children or remoter issue . . . but so nevertheless that the settlor or any wife of his shall not take any interest exceeding a life interest and that no child or remoter issue of the settlor shall take an interest vesting earlier than his or her age of twenty-one years or marriage . . ." The settlor married in 1934. There was one child of his marriage. In 1937 his wife and child both died. By a deed of appointment made in 1939 the settlor irrevocably appointed that the trust funds should be held on trust to pay the income thereof to himself during his life. The settlor took out this summons which, as amended, asked, whether, on the true construction of the proviso, the settlor had power to appoint that the whole of the trust funds, or any part thereof, be withdrawn wholly or partially from the operation of the settlement and be held upon trust for the settlor for life, with remainder to any wife of his for life, with remainder to his children or remoter issue at twenty-one or marriage.

MORTON, J., said the first question was whether, if the settlor executed an appointment on the lines indicated in the summons, he would be exercising his power of appointment "after any marriage" within the meaning of the proviso in the settlement. These words could not be limited to the period during which the marriage was subsisting. The settlor was entitled to exercise the power at any time after he was married. The further question arose whether he could make the appointment he had made. It was suggested that, as he had no wife and child living, he could not do so. On the true construction, he could appoint to himself, his wife and his children. His lordship accordingly declared that the settlor had power to appoint that the whole of the trust funds or any part thereof be held on trust for himself for life with remainder to any wife of his for life with remainder to his children or remoter issue, but his lordship did not decide whether the appointment of 1939 was valid or not.

COUNSEL: *Grant*, K.C., and *George Russo*; *G. D. Johnston*.

SOLICITORS: *Reid Sharman & Co.*; *H. B. J. Paull*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

High Court—King's Bench Division.

Maude *v.* Inland Revenue Commissioners.

Wrottesley, J. 6th February, 1940.

REVENUE—INCOME TAX—CLAIM FOR REPAYMENT—INTEREST ON OVERDRAFT WITH BANK'S BRANCH IN GUERNSEY—WHETHER INTEREST "PAYABLE IN THE UNITED KINGDOM"—TAXPAYER'S RIGHT TO REPAYMENT OF TAX ON AMOUNT OF INTEREST—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), s. 36 (1).

Appeal by the subject, by case stated, from a decision of the Commissioners for the Special Purposes of the Income Tax Acts.

The appellant claimed from the respondents, the Inland Revenue Commissioners, a certain repayment of income tax for the year ending the 5th April, 1937. For that year she was resident in Guernsey and during the year she paid £133 6s. to the Guernsey branch of the National Provincial Bank, Ltd., as interest on an overdraft which the bank had allowed her. A part of her income exceeding the amount of the interest was liable to income tax in the United Kingdom. The head office of the bank is in London, where it is assessed to income tax on profits, which include the profits of all its branches. Until 1935 the appellant kept an account with the Exeter branch of the bank, but in that year she had the account transferred to the Guernsey branch, where she arranged with the manager for an overdraft in connection with which she signed a memorandum of deposit and transfer dated the 31st July, 1936. No specific terms were arranged about payment of interest on the overdraft, but in fact it was always paid by debiting the account with it. After the appellant's account was transferred to the Guernsey branch, the whole of her income subject to tax in the United Kingdom was paid into her account at the branch. It was contended for the appellant before the Special Commissioners that she was entitled under s. 36 (1) of the Income Tax Act, 1918, to repayment of income tax in respect of the whole of the £133 6s. It was contended for the respondents that the interest on the overdraft was payable in Guernsey only, and consequently was not payable in the United Kingdom within the meaning of s. 36 (1) of the Act of 1918, which provides that: "Where interest payable in the United Kingdom on an advance from a bank carrying

on . . . business in the United Kingdom is paid . . . without deduction of tax out of profits . . . brought into charge to tax, the person by whom the interest is paid shall be entitled . . . to repayment of tax on the amount of the interest." The commissioners disallowed the deduction, holding that, for the purposes of the case, the bank's business must be regarded as falling under two heads—namely, the part carried on in the United Kingdom, and the part which was not carried on in the United Kingdom.

WROTTESLEY, J., said that it was argued for the appellant that, truly regarded, the interest which she owed on her overdraft at the Guernsey branch of the bank was interest payable in the United Kingdom and therefore fell precisely within the terms of s. 36 (1). If that were so, it was common ground that she was entitled to succeed. The bank had its headquarters in London, and, *prima facie*, might be paid there by any person who owed it money. It was true that every bank itself, that was, its headquarters, or any of its managers, might insist on payment of interest on an overdraft locally, but nothing of that kind had happened here. Cases like *Clare and Co.* v. *Dresdner Bank* [1915] 2 K.B. 576 laid down that the customer of a bank had no right to walk into any branch of the bank and then and there demand payment of money owed to him by the bank. There were many reasons why to allow such a course would be absurd. One branch of a bank, for example, had no means of knowing at short notice what was owed to a customer by the branch where he kept his account. But those authorities did not concern the case where a bank lent money. If the appellant had insisted on repaying the interest to the bank at its headquarters, then, in the absence of any special arrangement, she would have been entitled to do so. Such a repayment would have been a valid tender for which she could have insisted on being given a proper receipt. In the absence of any special arrangement, of which there was no trace in the case, it was impossible to come to the conclusion that the bank could have refused to accept payment of the interest in question except at its Guernsey branch. That being so, the interest was in that sense payable in the United Kingdom. It was there payable if the appellant chose to pay it there. The appeal must be allowed with costs.

COUNSEL: *Needham*, K.C., and *Scrimgeour*; *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills*.

SOLICITORS: *Wood, Nash & Co.*; *The Solicitor of Inland Revenue*.

[Reported by R. C. CALBURN, Esq., Barrister-at Law.]

CORRECTION.

Myers *v.* **Elman.**

In the report of this case at p. 184 of our issue of the 16th March, it was inadvertently stated that Lord Maugham said: "The appeal should be dismissed"; whereas, in fact, he said: "The appeal should be allowed." This was probably apparent from the terms of the report.

Obituary.

DR. H. R. OSWALD.

Dr. H. R. Oswald, Past President of the Coroners' Society of England and Wales, died on Monday, 11th March. He practised as a doctor until 1890, when he entered at the Middle Temple, and was called to the Bar in 1894. He became Deputy-Coroner in the Central and Western Districts, County of London, and later in the South-Western District and the Kingston District of Surrey. From 1902 to 1919 he was Coroner for the South-Eastern District, and from 1919 to 1930, when he retired, was Coroner for the Western District of London. In 1922 he was elected President of the Coroners' Society for England and Wales. He was also a member of the Medico-Legal Society. In 1936 he published an entertaining book of reminiscences entitled "Memoirs of a London County Coroner," to which Sir Bernard Spilsbury contributed a foreword.

MR. A. H. CANHAM.

Mr. Alfred Henry Canham, solicitor, of Sudbury, died on Tuesday, 12th March, at the age of seventy-one. Mr. Canham was admitted a solicitor in 1892, and was Registrar of Sudbury County Court.

MR. H. B. HOPGOOD.

Mr. Harold Burn Hopgood, solicitor, of Messrs. Hopgood, Mills & Lonsdale, solicitors, of 11, New Square, Lincoln's Inn, W.C.2, died on Saturday, 16th March. Mr. Hopgood was admitted a solicitor in 1891.

MR. W. H. SCOTT.

Mr. Walter Hesketh Scott, solicitor, of Messrs. W. H. Scott & Son, solicitors, of Bromsgrove, died on Sunday, 3rd March, at the age of eighty-four. Mr. Scott was admitted a solicitor in 1879, and had held several public appointments, including those of Registrar of the Alcester County Court, and Clerk to the Bromsgrove Magistrates.

War Legislation.

(Supplementary List, in alphabetical order, to those published, week by week, in THE SOLICITORS' JOURNAL, *from the 16th September, 1939, to the 16th March, 1940.)*

Progress of Bills.

House of Lords.

Agriculture (Miscellaneous War Provisions) Bill [H.C.].
Read Third Time. [14th March.
Old Age and Widows' Pensions Bill [H.C.].
Read Third Time. [19th March.
Rating and Valuation (Postponement of Valuations) Bill [H.C.].
Read Third Time. [19th March.

House of Commons.

Agricultural Wages (Regulation) Amendment Bill [H.C.].
Read First Time. [12th March.
Societies (Miscellaneous Provisions) Bill [H.C.].
Read Second Time. [20th March.
Solicitors (Emergency Provisions) Bill [H.L.].
Read Second Time. [20th March.
Special Enactments (Extension of Time) Bill [H.L.].
Read Second Time. [20th March.

Statutory Rules and Orders.

No. 345. **Animal.** Diseases of Animals. The Warble Fly (Dressing of Cattle) (Amendment) Order, dated March 6.

No. 342/S.19. **Charity, Scotland.** The House to House Collections (Scotland) (Amendment) Regulations, dated February 29.

No. 261. **Customs.** The Import Duties (Drawback) (No. 2) Order, dated March 13. (Amendment to Drawback Order No. 9, 1935).

No. 352. Customs. The Import Duties (Exemptions) (No. 1) Order, 1940, dated March 14. (Certain Iron and Steel Products).

Nos. 353 & 354. Customs. The Additional Import Duties (Nos. 2 and 3) Orders, 1940, dated March 14. (Iron and Steel Goods).

Nos. 343 & 344. Customs. The Import of Goods (Prohibition) (Nos. 8 and 9) Orders, dated March 9.

No. 341/S.18. **Emergency Powers (Defence).** Billeting (Scotland). Order, dated March 1, prescribing the Price payable in respect of Accommodation furnished in any Premises in accordance with a Billeting Notice where the Occupier is required to provide Board and Lodging for two or more Children, all or any of whom have attained the age of Fourteen.

No. 339. Emergency Powers (Defence). Order, dated March 9, amending the Meat (Maximum Retail Prices) (Northern Ireland) Order, 1940.

No. 331. Emergency Powers (Defence). The Wireless Operators and Watches (Merchant Ships) Order, dated March 7.
No. 248. **Friendly Societies Rules,** dated March 14.
No. 247. **Industrial Assurance Rules,** dated March 14.
No. 322. **Merchant Shipping** (Additional Life-Saving Appliances) Rules, dated March 7.
No. 346. **Trade Boards** (Furniture Manufacturing) Special Order, dated March 5.

Non-Parliamentary Publications.

STATIONERY OFFICE.

List of Emergency Acts and Statutory Rules and Orders, Supplement 13, March 13.

Copies of the above Bills, S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Notes.

The next Quarter Sessions of the Peace for the Borough of Wolverhampton will be held at the Sessions Court, Town Hall, North Street, Wolverhampton, on Friday, 29th March, at 10 a.m.

Following representations by members who are concerned with the management of property, the Council of the Incorporated Society of Auctioneers and Landed Property Agents have written to the Treasury regarding the payment of income tax under Schedule A. The total amount of such tax is now due on the 1st January. The society points out that at the existing high rate of tax the amount is rarely covered by the rent collected for one quarter. Where agents manage properties, however, they meet, on behalf of the landlord, many other outgoings and forward to him the remaining balance. Now, the rent may not cover income tax alone, while charges for repairs and rents are likely to increase and have to be met out of the sums paid by tenants. To assist in meeting the difficulties of landlords and agents, the council recommend a return to the old practice under which the tax was payable in two equal instalments on 1st January and 1st July.

THE SOLICITORS' LAW STATIONERY SOCIETY, LTD.

NEW DIRECTOR.

Mr. JOHN VENNING, M.C., M.A. Oxon (Messrs. Bird & Bird), of 5 Gray's Inn Square, W.C.1, has been elected to the Board of The Solicitors' Law Stationery Society, Limited.

High Court of Justice.

EASTER VACATION, 1940.

NOTICE.

There will be no sitting in Court during the Easter Vacation.

During the Easter Vacation all Applications "which may require to be immediately or promptly heard," are to be made to the Honourable Mr. Justice CASSELS.

The Honourable Mr. Justice CASSELS will act as Vacation Judge from Thursday, 21st March, 1940, to Monday, 1st April, 1940, both days inclusive. His Lordship will sit as King's Bench Judge in Chambers in King's Bench Judge's Chambers on Wednesday, 27th March, at 11 o'clock. On other days within the above period, applications in urgent matters may be made to his Lordship personally or by post.

When applications are made by post, the brief of counsel should be sent to the Judge by post or rail prepaid, accompanied by office copies of the affidavits in support of the application, and also by a minute on a separate sheet of paper, signed by Counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows:—"Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Chambers, Royal Courts of Justice, London, W.C.2."

The papers sent to the Judge will be returned to the Registrar.

The address of the Vacation Judge can be obtained on application at the Chancery Registrars' Chambers, Room 136, Royal Courts of Justice.

Chancery Registrars' Chambers,
Royal Courts of Justice.
March, 1940.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October 1939) 2%. Next London Stock Exchange Settlement, Thursday, 28th March, 1940.

	Div. Months.	Middle Price 18 Mar. 1940.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	108	3 14 1	3 7 6
Consols 2½%	JAJO	72⅛	3 9 0	—
War Loan 3½% 1952 or after	JD	99	3 10 8	—
Funding 4% Loan 1960–90	MN	111¾	3 11 7	3 3 11
Funding 3% Loan 1959–69	AO	97	3 1 10	3 3 2
Funding 2¾% Loan 1952–57	JD	96⅛	2 17 0	3 0 5
Funding 2½% Loan 1956–61	AO	90⅛	2 15 3	3 2 6
Victory 4% Loan Av. life 21 years	MS	109	3 13 5	3 7 10
Conversion 5% Loan 1944–64	MN	110¼	4 10 8	1 17 6
Conversion 3½% Loan 1961 or after	AO	98	3 11 5	—
Conversion 3% Loan 1948–53	MS	100⅛	2 19 8	2 18 5
Conversion 2½% Loan 1944 49	AO	98¼	2 10 10	2 14 6
National Defence Loan 3% 1954–58	JJ	100	3 0 0	3 0 0
Local Loans 3% Stock 1912 or after	JAJO	85	3 10 7	—
Bank Stock	AO	340	3 10 7	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	82½	3 6 8	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	87	3 9 0	—
India 4½% 1950–55	MN	113	3 19 8	2 19 7
India 3½% 1931 or after	JAJO	95½	3 13 4	—
India 3% 1948 or after	JAJO	82½	3 12 9	—
Sudan 4½% 1939–73 Av. life 27 years	FA	108	4 3 4	4 0 2
Sudan 4% 1974 Red. in part after 1950	MN	103	3 15 6	3 6 9
Tanganyika 4% Guaranteed 1951–71	FA	107	3 14 9	3 4 8
L.P.T.B. 4½% "T.F.A." Stock 1942–72	JJ	104	4 6 6	2 10 0
Lon. Elec. T. F. Corpn. 2½% 1950–55	FA	91½	2 14 8	3 3 9
COLONIAL SECURITIES				
*Australia (Commonw'th) 4% 1955–70	JJ	105½	3 15 10	3 10 5
Australia (Commonw'th) 3% 1955–58	AO	90⅛xd	3 6 4	3 14 0
*Canada 4% 1953–58	MS	107⅛	3 14 5	3 5 8
*Natal 3% 1929–49	JJ	99	3 0 7	3 2 8
New South Wales 3½% 1930–50	JJ	98½	3 11 1	3 13 8
New Zealand 3% 1945	AO	95⅛	3 2 2	3 15 7
Nigeria 4% 1963	AO	106xd	3 15 6	3 12 5
Queensland 3½% 1950–70	JJ	97⅛	3 11 10	3 12 9
*South Africa 3½% 1953–73	JD	101	3 9 4	3 8 0
Victoria 3½% 1929–49	AO	98½	3 11 1	3 13 7
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	84	3 11 5	—
Croydon 3% 1940–60	AO	93½	3 4 2	3 9 1
*Essex County 3½% 1952–72	JD	102	3 8 8	3 6 2
Leeds 3% 1927 or after	JJ	85	3 10 7	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	96	3 12 11	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	71	3 10 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	84	3 11 5	—
*London County 3½% Consolidated Stock 1954–59	FA	103	3 8 0	3 4 7
Manchester 3% 1941 or after	FA	84	3 11 5	—
Metropolitan Consd. 2½% 1920–49	MJSD	97½	2 11 3	2 16 4
Metropolitan Water Board 3% "A" 1963–2003	AO	87	3 9 0	3 10 4
Do. do. 3% "B" 1934–2003	MS	88½	3 7 10	3 9 0
Do. do. 3% "E" 1953–73	JJ	92	3 5 3	3 8 2
*Middlesex County Council 4% 1952–72	MN	105	3 16 2	3 10 3
* Do. do. 4½% 1950–70	MN	108	4 3 4	3 12 2
Nottingham 3% Irredeemable	MN	84	3 11 5	—
Sheffield Corp. 3½% 1968	JJ	101	3 9 4	3 8 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	102½	3 18 1	—
Gt. Western Rly. 4½% Debenture	JJ	111	4 1 1	—
Gt. Western Rly. 5% Debenture	JJ	122½	4 1 8	—
Gt. Western Rly. 5% Rent Charge	FA	116	4 6 2	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	114	4 7 9	—
Gt. Western Rly. 5% Preference	MA	100½	4 19 6	—
Southern Rly. 4% Debenture	JJ	101½	3 18 10	—
Southern Rly. 4% Red. Deb. 1962–67	JJ	104½	3 16 7	3 13 11
Southern Rly. 5% Guaranteed	MA	114	4 7 9	—
Southern Rly. 5% Preference	MA	100½	4 19 6	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.